IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No.251 of 2000

P.Jayaraj ..Appellant/Complainant

-vs-

R.Saroja .. Respondent/Accused

This appeal is filed under Section 378 of Crl.P.C against the Judgment made in C.C.No.4309 of 1996 dated 14.01.2000 on the file of the Court of XVII Metropolitan Magistrate, Saidapet, Chennai-600 015.

For appellant : Mr.M.S.Pandian
For respondent : Mr.S.Jaganathan

JUDGMENT

This appeal has been preferred by the complainant against the Judgment of acquittal in C.C.No.4309 of 1996 on the file of the Court of XVII Metropolitan Magistrate, Saidapet, Chennai-600 015.

2. The short facts in the complaint preferred by the complainant relevant for the purpose of deciding this appeal are as follows:

The accused Saroja is running a fire wood shop at Door No.89,Pachaippan Street, Madras -83. The said shop was originally owned by her husband. After his death,the said business was continued by the accused. The complainant is running a grocery shop at Door No. 20, 84th Street, Ashok Nagar, Chennai. There was a transaction between the complainant and the accused. In this regard, the accused owe Rs.2,10,000/- to the complainant. To clear the said debt, the accused had drawn a cheque in M.C.C.Bank bearing Cheque No.292632 dated 10.7.1996. Ex P1 is the said cheque. When the said cheque was presented for realisation, it was returned with an endorsement that "There was no sufficient funds" in the account of the drawer on 12.7.1996. Ex P2 is the bank intimation showing that the accused had no sufficient funds in his account. Ex P4 is the counterfoil to show that the said cheque was deposited with the bank. On 15.7.1996, the complainant issued a notice to the accused informed about the dishonour of the cheque. Ex P5 is the copy of the notice. Ex P6 is the acknowledgement for the accused having received the notice. The accused

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neither repaid the debt nor sent any reply to the notice. Hence the complaint.

3. The complaint was taken on file by the learned Judicial Magistrate. The accused appeared on summons. The copies under Section 207 Cr.P.C. were furnished to the accused. When the offence was explained to the accused, he denied his complicity with the crime.

4. On the side of the complainant, P.Ws.1 to 3 were examined and Exs P1 to P11 were marked. P.W.2 is the Manager in M.C.C.Bank, K.K.Nagar Branch. He would depose that the accused Saroja was having Savings Bank A/C No.4595 and the Cheque No.291632 dated 9.7.1996 for a sum of Rs.2,10,000/- was presented in his bank for realisation, the said cheque was forwarded to Andhra Bank, Ashok Nagar Branch on 10.7.1996. But it was informed on the same date that in S.B.A/c No.4595 , there was no sufficient funds. Ex P11 is the statement of account maintained in their bank for the period from 1.4.1996 to 24.7.1996.

5.P.W.3 is a Manager in Andhra Bank K.K.Nagar Branch, Chennai -83. He would corroborate the evidence of P.W.2 and would depose that the said cheque bearing Cheque No.291632 was returned for the reasoning that there was no sufficient fund in the account of the accused.

6.When incriminating circumstances were explained to the accused under Section 313 Cr.P.C. the accused would deny each and every circumstance put to him. The accused has examined one R.K.Bhasuvatharaj as D.W.1 and the accused has examined herself as D.W.2. The agreement between D.W.1 Bhasuvatharaj and the complainant was marked as Ex D1.

7.After going through the oral and documentary evidence, the learned trial Judge has come to a conclusion that the accused is not guilty to warrant conviction under Section 138 of Negotiable Instruments Act and consequently, acquitted the accused from the charges levelled against her. Aggrieved by the findings of the learned trial Judge, the complainant has preferred this appeal.

8.Now the point for consideration in this appeal is whether the Judgment of the trial Court is perverse and against the provisions of law to warrant any interference from this Court?

9. The point:

Section 138 of Negotiable Instruments Act runs as follows:

> "Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour

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the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque or with both."

To warrant conviction under Section 138 of Negotiable Instruments Act, the complainant must prove that there was a debt created by the accused and was in existence and to discharge the said debt, a cheque was drawn by the accused and when the cheque was presented in the bank for realisation, it was dishonoured by the bank saying there was no sufficient funds in the account of the drawer. Ex P1 cheque is for Rs.2,10,000/-. Even though, the accused would admit that Ex P1 contains her signature , no consideration was passed on it. It is the definite case of the accused that there was an agreement entered into between D.W.1 Bhasuvatharaj and the complainant under Ex D1 and a sum of Rs.1,75,000/- was received in lieu of the said agreement for sale of the house belonging to the accused and the subsequent date ie., on 29.8.1986 also, the accused said to have received a sum of Rs.1,70,000/- from the said Bhasuvatharaj and to that effect endorsement was made on the back of Ex D1 and that the said loan was arranged only by the complainant and at that time she gave ten blank cheques containing her signatures alone and out of them eight cheques were returned to her and with the remaining two cheques, the complainant has forged Ex P1 by filling up the same.

10. The learned counsel appearing for the appellant relying on Ex P7 a note book containing some entries that the accused has borrowed various amounts on many occasions which were entered into in Ex P7 registered by him and only to discharge the said debt the accused gave ExP1 cheque which was bounced with an endorsement "no sufficient funds" . A perusal of Ex P7 will go to show that it does not contain the signature of the accused. EX P7 cannot be treated as a legally enforceable debt. Under such circumstances, the burden is heavily on the complainant to prove that the accused borrowed the amount on various dates as stated in ExP7. The learned trial Judge has come to a definite conclusion that no reliance can be attached to Ex P7 because it does not contain signature of the accused or any other details. Since the complainant has miserably failed to prove that Ex P1 cheque for Rs.2,10,000/- was drawn only to discharge the debt, the complaint under Section 138 of Negotiable Instruments Act cannot be sustainable. Further the transaction under Ex P7 for the date between 9.7.1994 to 6.6.1996 comes to Rs.4,15,125/-. So it cannot be said that the cheque for a sum of Rs.2,10,000/-under Section 138 of Negotiable Instruments Act, relates to the debt under Ex P7 as rightly observed by the learned trial Judge in his judgment. Under such circumstances,I do not find any reason to interfere with the findings of the learned trial Judge which is neither perverse ,illegal nor infirm. Point is answered accordingly.

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11. In fine, the appeal is dismissed confirming the Judgment in C.C.No.4309 of 1996 on the file of the Court of XVII Metropolitan Magistrate, Saidapet, Chennai.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sg

To

1. The XVII Metropolitan Magistrate,
Saidapet, Chennai.

2. -Do-thro' The Chief Metropolitan Magistrate,
Egmore, Chennai - 8.

1 cc To Mr.S.Pandian, Advocate, SR.5792.

Crl.A.No. 251/2000

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